

**Comments of  
David Keating  
Executive Director  
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on the  
Consolidated Application for Authority to Transfer Control of XM Radio Inc.  
and Sirius Satellite Radio Inc.  
MB Docket No. 07-57  
Submitted to the  
Federal Communications Commission**

I've loved music and radio since I was a child listening to AM broadcasts around the country and Canada. I heard the new hits before they made it big in New York. I improved my French by listening to Canadian hockey broadcasts. And I was fortunate to live in areas so I could listen to WNEW-FM and then WHFS-FM during their prime.

Like many, I became disgusted by the creative collapse of "free" radio. The breaking point for me was when I would drive to work and have to listen to commercials for over half the trip, despite having 12 presets on my car radio.

Sirius and XM (I own both, one for each car) are wonderful consumer options, and we appreciate the FCC's decision to award licenses to the two companies ten years ago.

The proposed merger will expand consumer choice by allowing subscribers of XM and Sirius to get the best of both offerings for less cost and with fewer wires on the dashboard.

We strongly believe the Commission should approve the transfer of control of the licenses, which will send a clear signal that use of spectrum will not be locked up by the agency based on decisions made years ago when the facts were different. Such flexibility will ensure dynamic new uses of spectrum, leading to greater efficiency and consumer choice.

As former FCC Chairman Reed Hundt recently noted, "it was never the case that these service rules were intended to be written [in] concrete or, like the Constitution of the United States, changed only through an elaborate process. It was an attempt to figure out a good way to get the satellite radio industry off to a pro-competitive start and then in the fullness of time the FCC and the parties and the people in the industry would be able to see, well, what works and what doesn't work, what's happening and what isn't happening."

When the FCC approved licenses for XM and Sirius the world of auto, portable and home entertainment was far different than it is today.

Today, there are incredible choices that present strong competition to the two satellite radio companies. Consider these options that were not available when the licenses were granted, but are now available for music and entertainment, and all of them are portable.

- iPod music players and competitors such as Microsoft's Zune.
- iPod video.
- V Cast streaming video and music to Verizon cell phones.
- Ford's Sync system that allows drivers to use their voice to call up any music, podcast or audiobook on their portable digital music players.
- HD radio, which allows over the air stations to expand choices and improve sound quality.
- Internet radio stations, including Last.FM and Pandora.com, which stream music based on each listener's preferences, allowing for an unlimited number of "stations."
- DVD players, which are now common in many vehicles.
- Internet access to your cell phone.

These are just the new choices. Ten years ago, people had cell phones, AM/FM radios, and CD players, which remain viable entertainment options in the car and at home. Judging from the number of people who seem to talk incessantly on their cell phones, cell phone conversations are one form of entertainment, though personally I fail to see the appeal.

More competitors are on the way. According to Slacker, Inc. their "Personal Radio enables listeners to create, edit and share their own stations or personalize over 100 professionally programmed stations." In two weeks Slacker will start shipping its premium radio, which according to the company "gives customers access to all the features and capabilities of the Slacker Basic Radio service, plus the ability to skip an unlimited number of songs while playing their favorite Slacker Radio stations."

The Slacker premium radio downloads radio streams through a Wi-Fi connection and stores content, which can be accessed at any time. Apple's new iPod Touch model also uses Wi-Fi technology to load content. Microsoft's new Zune player automatically synchronizes as it charges, downloading your latest music or podcasts.

Slacker also plans a satellite radio download service using leased space on existing satellites.

A few days ago, in a letter dated November XX (sic), self-styled consumer groups falsely claimed that the proposed Sirius and XM combination is a "merger to monopoly." As noted by Tyler Savery, one of the consumer groups

publishes Consumer Reports magazine. He reports that “Even the Consumer Reports buying guide for iPods & MP3 players lists not only satellite radio, but cell phones as well. Clearly Consumers Union sees that there is crossover in the audio entertainment sector.”

Competition in the radio, music, news and video distribution business is more intense than ever. Allowing Sirius and XM to transfer control of their license will lead to more consumer choice and competition. It will also demonstrate that the FCC will consider innovations for use of spectrum, and encourage more innovative proposals in the future.